

**BOIES SCHILLER FLEXNER LLP**

David Boies (admitted pro hac vice)  
333 Main Street  
Armonk, NY 10504  
Tel.: (914) 749-8200  
dboies@bsfllp.com

Mark C. Mao, CA Bar No. 236165  
Beko Reblitz-Richardson, CA Bar No. 238027  
44 Montgomery St., 41st Floor  
San Francisco, CA 94104  
Tel.: (415) 293-6800  
mmao@bsfllp.com  
brichardson@bsfllp.com

James Lee (admitted pro hac vice)  
Rossana Baeza (admitted pro hac vice)  
100 SE 2nd St., 28th Floor  
Miami, FL 33131  
Tel.: (305) 539-8400  
jlee@bsfllp.com  
rbaeza@bsfllp.com

Alison L. Anderson, CA Bar No. 275334  
M. Logan Wright, CA Bar No. 349004  
2029 Century Park East, Suite 1520  
Los Angeles, CA 90067  
Tel.: (213) 995-5720  
alanderson@bsfllp.com  
mwright@bsfllp.com

**SUSMAN GODFREY L.L.P.**

Bill Carmody (admitted pro hac vice)  
Shawn J. Rabin (admitted pro hac vice)  
Steven M. Shepard (admitted pro hac vice)  
Alexander Frawley (admitted pro hac vice)  
Ryan Sila (admitted pro hac vice)  
One Manhattan West, 50<sup>th</sup> Floor  
New York, NY 10001  
Tel.: (212) 336-8330  
bcarmody@susmangodfrey.com  
srabin@susmangodfrey.com  
sshepard@susmangodfrey.com  
afrawley@susmangodfrey.com  
rsila@susmangodfrey.com

Amanda K. Bonn, CA Bar No. 270891  
1900 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067  
Tel.: (310) 789-3100  
abonn@susmangodfrey.com

**MORGAN & MORGAN**

John A. Yanchunis (admitted pro hac vice)  
Ryan J. McGee (admitted pro hac vice)  
Michael F. Ram, CA Bar No. 104805  
201 N. Franklin Street, 7th Floor  
Tampa, FL 33602  
Tel.: (813) 223-5505  
jyanchunis@forthepeople.com  
rmcgee@forthepeople.com  
mram@forthepeople.com

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL  
CATALDO, JULIAN SANTIAGO, and  
SUSAN LYNN HARVEY, individually and  
on behalf of all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688-RS

**REPLY IN SUPPORT OF PLAINTIFF  
SAL CATALDO'S MOTION FOR  
VOLUNTARY DISMISSAL WITHOUT  
PREJUDICE**

The Honorable Richard Seeborg  
Courtroom 3 – 17th Floor

Date:

Time:

1 Plaintiffs respectfully submit for the Court’s consideration this short reply in support of  
2 Plaintiff Sal Cataldo’s motion for dismissal. Google’s opposition only reinforces that his motion  
3 for voluntary dismissal should be granted.

4 **First**, with only one exception, every case Google cites is a case in which the court *granted*  
5 the motion for dismissal. The only case cited by Google in which the court denied voluntary  
6 dismissal is distinguishable, involving only a single plaintiff. *Covington v. Syngenta Corp.*, 225 F.  
7 Supp. 3d 384, 387 (D.S.C. 2016). The cases cited by Google otherwise confirm that courts deny  
8 such motions only in the rarest circumstances. Such circumstances do not exist in this case.

9 **Second**, Google’s suggestion that there is not “a single case where an appointed class  
10 representative was permitted to voluntarily dismiss his or her complaint and withdraw as a class  
11 representative after class certification had been granted and the case was on the eve of trial” (Opp.  
12 at 1) is incorrect. *See Ormond v. Anthem., Inc.*, 2012 WL 1596321, at \*2 (S.D. Ind. May 4, 2012)  
13 (allowing dismissal of a class representative, after certification and according to PACER docket  
14 just 25 days before the scheduled final pretrial conference); *Cobell v. Norton*, 213 F.R.D. 43, 46  
15 (D.D.C. 2003) (in 2003 allowing dismissal of one of five appointed class representatives where  
16 class certification order issued in 1997). “[N]o plaintiff should be forced to remain a plaintiff  
17 involuntarily unless a compelling reason exists.” *Ormond*, 2012 WL 1596321 at \*2; *see also Doe*  
18 *v. Arizona Hosp. & Healthcare Ass’n*, 2009 WL 1423378, at \*13 (D. Ariz. Mar. 19, 2009)  
19 (“Allowing Jane Doe to withdraw as class representative is the appropriate and just approach if  
20 [she] does not wish to represent the class” – noting that there were three other class representatives  
21 remaining) (internal quotation marks and citations omitted).

22 **Third**, Google’s suggestion that Mr. Cataldo must provide an “explanation” for his  
23 requested dismissal (Opp. at 1) is also incorrect. Courts have rejected the argument made by  
24 Google, that a request for dismissal somehow demonstrates that the testimony “would benefit  
25 Google’s defense.” Opp. at 1; *see, e.g., Anderson v. Merit Energy Co.*, 2008 WL 4059947, at \*2  
26 (D. Colo. Aug. 29, 2008) (rejecting argument that plaintiffs needed to provide “plausible  
27 explanation” and allowing dismissal of two appointed class representatives, leaving nine others).

1       **Fourth**, Google’s opposition establishes no legal prejudice. As explained in *In re Vitamins*  
2 *Antitrust Litigation*, 198 F.R.D. 296, 304-05 (D.D.C. 2000), cited by Google, no legal prejudice  
3 exists where “most of this work would still have been necessary since some plaintiffs, i.e. the class  
4 representatives, are still pursuing this litigation.” *See also In re Diisocyanates Antitrust Litig.*,  
5 2023 WL 8771482, at \*2 (W.D. Pa. June 9, 2023) (no prejudice where other plaintiffs remained).  
6 There are three other class representatives ready, willing, and able to testify at trial. There is no  
7 need for Mr. Cataldo to also appear at trial, or for Google to play any of his deposition testimony.

8       **Fifth**, Google’s argument that granting the motion would somehow prejudice “Google’s  
9 right that all non-opt out class members will be bound by the trial verdict” (Opp. at 4-5) is also  
10 meritless. Claims arising out of a “certified class” or “class proposed to be certified for purposes  
11 of settlement ... may be settled, voluntarily dismissed, or compromised only with the court’s  
12 approval.” Fed. R. Civ. P. 23(e). Notice to the class is not required when “the rights of the nonparty  
13 class members could not possibly be prejudiced by a dismissal.” *Id.*<sup>1</sup> On this basis, courts have  
14 even permitted modifications to settlement agreements without re-noticing the class so long as the  
15 modifications do not materially alter the settlement agreement or affect the class members’ rights.  
16 *E.g., Rikos v. Procter & Gamble Co.*, 2022 WL 715972, at \*1 (S.D. Ohio Mar. 10, 2022).

17       **Sixth**, Google’s request to have dismissal “conditioned” on Google’s ability to play  
18 deposition testimony by Mr. Cataldo (Opp. at 1) should also be rejected. Where courts have  
19 conditioned dismissal, that has been conditioned on completing discovery. Here, there is no further  
20 discovery to complete. There is no reason to deny Motion *in Limine* 4 as some kind of “trade off”  
21 for granting the instant motion. To the extent it may be appropriate to further consider Motion *in*  
22 *Limine* 4, the Court should defer a ruling on the relevance and probative value of evidence of Mr.  
23 Cataldo’s voluntary dismissal of his claims until trial.

24       <sup>1</sup> *Art Shy v. Navistar Int’l Corp.*, 2021 WL 1399277, at \*3 (S.D. Ohio Apr. 14, 2021) (“Where no  
25 legal right would be hindered ... Rule 23(e)’s procedural protections do not apply for the simple  
26 reason that there is no risk that an absent class member will be legally harmed”); *In re Enron Corp.*  
27 *Sec., Derivative & “ERISA” Litig.*, 2007 WL 209923, at \*3 (S.D. Tex. Jan. 24, 2007) (notice not  
28 required for voluntary dismissal under Rule 23(e) where the dismissal is without prejudice and  
“there is no resolution of any of the claims on the merits that would bind the class members”); 4  
A. Conte & H. Newberg, *Newberg on Class Actions*, § 11:72 at 265 (“If neither loss of benefit to  
the class nor evidence of collusive agreement is present, notice is unnecessary.”).

1 Dated: August 11, 2025

Respectfully submitted,

2 By: /s/ Mark C. Mao

3 Mark C. Mao (CA Bar No. 236165)  
4 mmao@bsflp.com  
5 Beko Reblitz-Richardson (CA Bar No. 238027)  
6 brichardson@bsflp.com  
7 BOIES SCHILLER FLEXNER LLP  
8 44 Montgomery Street, 41<sup>st</sup> Floor  
9 San Francisco, CA 94104  
10 Telephone: (415) 293 6858  
11 Facsimile (415) 999 9695

12 David Boies (admitted *pro hac vice*)  
13 dboies@bsflp.com  
14 BOIES SCHILLER FLEXNER LLP  
15 333 Main Street  
16 Armonk, NY 10504  
17 Telephone: (914) 749-8200

18 James Lee (admitted *pro hac vice*)  
19 jlee@bsflp.com  
20 Rossana Baeza (admitted *pro hac vice*)  
21 rbaeza@bsflp.com  
22 BOIES SCHILLER FLEXNER LLP  
23 100 SE 2<sup>nd</sup> Street, Suite 2800  
24 Miami, FL 33131  
25 Telephone: (305) 539-8400  
26 Facsimile: (305) 539-1307

27 Alison L. Anderson, CA Bar No. 275334  
28 alanderson@bsflp.com  
M. Logan Wright, CA Bar No. 349004  
mwright@bsflp.com  
BOIES SCHILLER FLEXNER LLP  
2029 Century Park East, Suite 1520  
Los Angeles, CA 90067  
Telephone: (813) 482-4814

Bill Carmody (*pro hac vice*)  
bcarmody@susmangodfrey.com  
Shawn J. Rabin (*pro hac vice*)  
srabin@susmangodfrey.com  
Steven Shepard (*pro hac vice*)  
sshepard@susmangodfrey.com  
Alexander P. Frawley  
afrawley@susmangodfrey.com  
Ryan Sila

1 rsila@susmangodfrey.com  
2 SUSMAN GODFREY L.L.P.  
3 One Manhattan West, 50<sup>th</sup> Floor  
4 New York, NY 10001  
5 Telephone: (212) 336-8330

6 Amanda Bonn (CA Bar No. 270891)  
7 abonnn@susmangodfrey.com  
8 SUSMAN GODFREY L.L.P.  
9 1900 Avenue of the Stars, Suite 1400  
10 Los Angeles, CA 90067  
11 Telephone: (310) 789-3100

12 John A. Yanchunis (*pro hac vice*)  
13 jyanchunis@forthepeople.com  
14 Ryan J. McGee (*pro hac vice*)  
15 rmcgee@forthepeople.com  
16 Michael F. Ram (CA Bar No. 238027)  
17 mram@forthepeople.com  
18 MORGAN & MORGAN, P.A.  
19 201 N Franklin Street, 7th Floor  
20 Tampa, FL 33602  
21 Telephone: (813) 223-5505  
22 Facsimile: (813) 222-4736

23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28